39. (New) The method of claim 32 wherein the amount of the *Vitex agnus-castus* is 20 to 40 mg.

40. (New) The method of claim 33 wherein the amount of the *Zingiber officinale* is 1 to 4g.---.

REMARKS

Claims 15 to 21, 23 to 27, 30 and 32 to 34 have been amended for formal purposes. New claims 35 to 40 have been introduced into the application. Enclosed is the additional fee for the extra claims.

Claims 15 to 34 have been rejected under 35 U.S.C. 112 second paragraph as indefinite. It is submitted the rejection is proper and should be withdrawn.

Claims 15 to 34 are described in the Office Action as vague and indefinite for numerous reasons. The Examiner states the form of the recited herbal components is not clearly delineated. The claims have been amended such as in claim 15 to delete the word "plant" since that term denotes the source and may have been misinterpreted as denoting, or relating to, the form of the component. Therefore, the claims are not indefinite on that basis.

Further, the claims as amended also address the Examiner's concern about the phrase "with at least one other plant component". It is clear that the compositions or preparations as recited contain the parthenium component as well as at least one other component selected from the groups recited in, for instance, claim 15. Thus, the Examiner's rejection for indefiniteness based on this consideration is unwarranted.

Claim 16 has been amended so there is no longer an issue of insufficient antecedent basis.

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Claim 17 has been amended so it is clear that at least one of the components of the preparation is in the form of the extract, powder, distillate, infusion, tincture or oil. While in theory all the components could be in any of those forms, claim 17 makes it clear that at least one of the components is in one of the recited forms.

Claim 23 has been amended by deletion of the phrase "in the form of the plant component and/or a preparation" and also has been amended to delete the preferred range. The same phrase has also been deleted from claims 24 to 26. It is submitted that this amendment places the claims in proper form and obviates other of the objections made by the Examiner regarding the claim(s).

Claims 23, 25, 26, 30, 32 and 33 have been amended by deleting the preferred range. The preferred ranges are recited in the newly introduced claims.

Claim 27 is not indefinite as amended. The Examiner's suggestions regarding claim 27 have been adopted for both that claim and also for claim 34.

It is believed the Examiner's rejection of claim 28 is improper. One of ordinary skill in the art would understand that the reference to "additional gastrointestinal complaints" refers to other conditions because there may be stomach pain from other conditions than menstrual cramps.

Claim 29 has been amended by the previously submitted amendment dated May 6, 2002.

Claims 15 to 17, 21, 22, 27, 29 and 34 are rejected under 35 U.S.C. 102(b) as anticipated by WO 96/22774 to Lazarowych et al. (WO '774) or by the product Product Alert Bulletin (PROMT Abstract). It is submitted these rejections are improper and should be withdrawn.

For a prior art reference to anticipate a claimed invention, that reference must show each and every feature of that invention and must show those features arranged as in the claimed invention. See *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193 (Fed. Cir. 1983). Further, the reference must contain an enabling disclosure so that one of ordinary skill in the art can make and practice the

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invention without undue experimentation. It is submitted that neither of the references anticipates the claimed subject matter and the rejection for anticipation is in error as a matter of law.

WO '774 discloses a preparation containing certain lactones, such as parthenolide, and Vitamin B complexes such as riboflavin for the treatment of migraines, cluster headaches, arthritis and bronchial complaints. It is this basic combination of ingredients which the reference discloses as effective for the various conditions.

The Examiner apparently is referring to pages 1 to 6 of the reference and in particular the listing of additional ingredients starting on page 5 and continuing on to page 6. The introductory phrase to that listing is that the pharmaceutical formulations may additionally include other known anti-migraine preparations, sedatives and relaxants, analgesics and anti-emetics. Following this introductory phrase, there is a listing of 34 additional ingredients. The reference never discloses which of those ingredients in combination with the lactone and Vitamin B ingredients are useful for any of the generally referred to conditions. Further, there are no amounts specified for any of the additional ingredients. For instance, ginger has been previously known to be useful as a relaxant in tea. Thus, assuming one of ordinary skill in the art chose ginger as the third component, although it is not clear from this reference why one would choose ginger as the third component, the skilled art worker would still have to engage in undue experimentation to determine the relative amounts.

As such, WO '774 does not identify the claimed invention nor does it contain disclosure to enable one of ordinary skill in the art to practice the invention without undue experimentation. Thus, WO '774 cannot, as a matter of law, anticipate the now claimed subject matter.

For the same reasons, the PROMT Abstract is also not an anticipatory reference. Further, the Examiner is requested to make of record the entirety of the article rather than just the Abstract.

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Claims 15 to 17, 21, 22, 23, 26 to 30, 33 and 34 were rejected under 35 U.S.C. 103(a) as unpatentable over WO '774, the PROMT Abstract, Journal of Natural Products, 1992 (Marles) and the admitted state of the art.

The deficiencies of WO '774 and the PROMT Abstract have been discussed above and those comments should be considered as if set forth here at length. Marles discusses a bioassay to be used, presents an analysis of various sources of parthenium and discusses the limits of the assay that is proposed in that article. The main point of the article is the consideration of a new bioanalytical technique. The reference does not in any way go beyond the previously cited prior art or that which has been discussed in the specification.

On page 1050 of the 1992 Marles article, there is a discussion of the theory underlying the bioassay. In particular, there is a discussion of the role that seratonin is believed to play in the pathogenesis of migraine headaches. However, Marles admits that the precise role of platelets and 5-HT are quite controversial. However, today serotonin release or update models are more commonly used in connection with depression models.

It is submitted that the Examiner's conclusion of obviousness based on the above-discussed art is unwarranted. The record relied upon by the Examiner contains no more than generalized statements which could mean a number of different things in different contexts and could apply to a number of different conditions. Thus, there is not a proper basis for a conclusion of obviousness based on the combination of references and it is submitted that a prima facie case of obviousness has not been made out. Nor is there motivation for the combination of references.

Claims 15 to 34 were rejected under 35 U.S.C. 103(a) as unpatentable over the PROMT Abstract, Castleman (The Healing Herbs), Marles and PDR for Herbal Medicine, POPP and the

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admitted state of the art in view of U.S. Patent No. 5,443,850 to Thys-Jacobs. It is submitted this rejection is improper and should be withdrawn.

PROMT and Marles have been discussed above and those comments should be considered as if set forth here at length.

Castleman appears to be a collection of the history and folklore regarding ginger. However, Castleman adds nothing to the above discussed references vis-à-vis the claimed invention. There is no mention in Castleman of any controlled studies showing the efficacy or safety of the substance. Castleman's only reference to a possible study is that published in Lancett where less than 1 mg was used to prevent nausea and the statement that Chinese physicians recommend 20 to 28 gms. to trigger menstruation. Castleman alone, or in combination, does not render the claimed subject matter obvious.

The PDR for Herbal Medicines does not support the rejection for obviousness. To the contrary, it notes that the prior believed effects of the herb are not supported by research results. The "indications and usage" heading generally refers to climacteric complaints or ailments and there is no mention of treatment of migraines.

The Wyandt PROMT citation does no more than repeat vague generalities about parthenium and ginger. In both instances, it appears that this reference is duplicative of other cited references or material of record.

The PROMT abstract does no more than mention *vitex agnus castus* as useful for treating numerous syndromes including PMS (which is different than migraine or menstrual cramps). The Examiner is requested to make the article, or the referred to European patent, of record if it is not already of record. However, this reference in and of itself is not enabling and adds nothing to the rejection for obviousness.

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U.S. Patent 5,443,850 is cited only for its review of statistical information in column 1 at about lines 22 to 49. However, the reference takes a totally different approach to the now claimed subject matter and utilizes combinations of calcium and Vitamin D to treat the condition. Thus, this reference is either non-analogous art or teaches away from the now claimed invention.

It is submitted that the conclusion of obviousness based on the cited references is improper and should be withdrawn. The number of references which the Examiner has combined illustrates the unobviousness of the now claimed subject matter and suggests that the rejection is the product of hindsight reconstruction using Applicants' disclosure as a template.

Further, there is no motivation to combine the references as has the Examiner. In each instance, the form of administration or use of the individual components is different from that in other references and there is no motivation to selectively combine only limited parts of the reference as has the Examiner.

The last two paragraphs on page of the Official Action are somewhat confusing. While the Examiner may request comparative data, it is not understood why the Examiner would engage in claim interpretation. The references cited by the Examiner are not specific in any regard and therefore, it is not understood how, based on those references, the Examiner can engage in claim interpretation as seems to be the case.

In view of the foregoing, reconsideration and allowance of the application with claims 15 to 40 are earnestly solicited.

A check in the amount of $108 is enclosed in payment for the addition of 6 new claims (dependent).

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It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,
COHEN, PONTANI, LIEBERMAN & PAVANE

By _____
Vincent M. Fazzari, Reg. No. 26,879
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: June 18, 2002

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AMENDMENTS TO THE CLAIMS SHOWING CHANGES

In the Claims:

15. (Amended) An herbal pharmaceutical preparation for the treatment of migraine, comprising: *Tanacetum parthenium* [with] and at least one other [plant] component selected from the group consisting of *Vitex agnus-castus*, *Cimicifuga racemosa*, and *Zingiber officinale* [and combinations thereof].

16. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein at least one of the components [and/or preparations] is in the form of a preparation of [the] a pharmaceutically active ingredient [ingredients are used].

17. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein [the preparation] at least one of the components is in the form of an extract, powder, distillate, infusion, tincture, or oil.

18. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of [claims] claim 15, whcrein the least one other [plant] component is *Vitex agnus-castus*.

19. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein the least one other [plant] component is *Cimicifuga racemosa*.

20. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein thc least one other [plant] component is *Vitex agnus-castus* and *Zingiber officinale*.

21. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein the least one other [plant] component is *Zingiber officinale*.

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23. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein *Tanacetum parthenium* [in the form of the plant component and/or a preparation] is present in an amount of 0.1-1 mg[, and preferably 0.2-0.6 mg] of parthenolide.

24. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein *Cimicifuga racemosa* [in the form of the plant component and/or a preparation] is present is an amount of 20-100 mg.

25. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein *Vitex agnus-castus* [in the form of the plant component and/or a preparation] is present in an amount of 20-100 mg[, preferrably 20-40 mg].

26. (Amended) The herbal pharmaceutical preparation for the treatment of migraine of claim 15, wherein *Zingiber officinale* [in the form of the plant component and/or a preparation] is present is an amount of 0.5-6 g[, and preferrably 1-4 g].

27. (Amended) A method for the treatment or prevention of migraine in a subject in need of such treatment or prevention, comprising: administering to [such a] said subject an effective amount of [herbal components and/or] a preparation of *Tanacetum parthenium* in combination with at least one other [plant] component selected from the group consisting of *Vitex agnus-castus, Cimicifuga racemosa*[,] and *Zingiber officinale* [and combinations thereof].

30. (Amended) The method of claim 27 wherein *Tanacetum parthenium* is present in an amount of 0.1-1 mg[, preferably 0.2-0.6 mg] of parthenolide.

32. (Amended) The method of claim 27 wherein *Vitex agnus-castus* is present in an amount of 20-100 mg[, preferably 20-40 mg].

33. (Amended) The method of claim 27 wherein *Zingiber officinale* is present in an amount of 0.5-6 g[, preferably 1-4 g].

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34. (Amended) The method of claim 27 wherein the preparation [herbal components or] preparation [are] is administered in the form of a capsule, a film coated tablet, a solution, a sugar-coated tablet, a suppository, an effervescent tablet, a chewable tablet, or an effervescent granulate.

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